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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,299	12/19/2001	Santos H. Collado	PPC-817	3388

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/025,299	Applicant(s) COLLADO ET AL.	
	Examiner Jacqueline F. Stephens	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/6/06.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 12/6/06 have been fully considered but they are not persuasive. Applicant argues the withdrawal of previously allowed claims based on the same reference is improper. The withdrawal of previously allowed claims is permissible MPEP 706.04 and it is the responsibility of the examiner to apply the reference if the examiner deems the claims unpatentable over the cited reference.

As to the rejection of claims 15-23 as being anticipated by Carstens, the examiner's statement regarding the cotton underwear is basically to show relevance of the term drapeable to a measure of flexural resistance and that is value is known in absorbent articles. Applicant argues Carstens does not disclose an absorbent article that is drapeable and includes a garment-facing layer that comprises microporous polyethylene. As the garment-facing layer comprising microporous polyethylene, Carstens discloses in col. 13, lines 39-61 a polyethylene microporous film. Although Carstens does not explicitly state the absorbent article is drapeable, Carstens does disclose the claimed flexural resistance value. Therefore, it is reasonable to presume that these properties are inherent to Carstens. Support for said presumption is found in the use of like materials as described below. The burden is upon Applicant to prove otherwise, *In re Fitzgerald* 205 USPQ 594.

Claim Rejections - 35 USC § 102/103

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 15-23 are rejected under 35 U.S.C. 102(e) as being anticipated by, or in the alternative, under 35 U.S.C. 103(a) as obvious over Carstens et al. USPN 6582411.

As to claims 15, 18, and 21-23, Applicant defines "drapeable" to mean having a flexural resistance of about 35 g or less as tested by the Modified Circular Bend Test, ASTM 4032-82 (page 3, lines 12-18). Applicant states in the specification that cotton underwear are known to have a flexural resistance of less than 35, page 3, lines 17-19. Therefore this value is known for an absorbent product. As to claims 15, 18, and 21 and 18, based on applicant's definition of drapeable, Carstens discloses an absorbent article comprising a first end, second end, and longitudinally extending first and second edges joining the first and second ends a layered portion comprising a body facing layer and a garment facing layer (Figures 1 and 4), wherein the article is drapeable. Carstens discloses a flexural resistance of about as tested by the Modified Circular Bend Test, ASTM 4032-82 (col. 3, lines 62-66 and col. 31, lines 30-34). Carstens teaches at col. 26, lines 15-21, SONTARA is well known in the art as a spunlaced rayon/poly nonwoven. For instance, Osborn USPN 5383869 teaches SONTARA is a spunlaced

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70%/30% rayon/polyester fiber sheet (Osborn col. 8, lines 25-30). Carsten teaches additional layers for the body facing layer 28 comprises two layers – an apertured cellulosic tissue and a high loft topsheet material, the high loft material having a degree of hydrophilicity, and thus some absorbency (col. 10, lines 25-29 and 62-67; col. 11, lines 1-17), and the absorbent layer 32. On page 4, line 24 through page 6, line 17, the specification sets forth suitable materials for making a drapeable absorbent article. Carstens teaches similar materials for the absorbent article (col. 7, lines 48-60; col. 9, line 4 through col. 14, line 2). Since Applicant has not set forth any significant structure in the claims, the Examiner must assume that a reference that meets the structural limitations that are present would inherently meet the desired properties of drape.

Regarding the drape of the absorbent article and the examiner's interpretation of the test and performance characteristics of the instant apparatus claims, when the structure recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A *prima facie* case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim except a property or function and the examiner can not determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof as in *In re Fitzgerald*, 619 F.2d 67, 70 205 USPQ 594, 596 (CCPA 1980).

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As to claims 16 and 19, Carstens teaches an embodiment with a transfer layer
106 col. 25, lines 4-6.

As to claims 17 and 20, Carstens discloses at least one wing 36 extending from
the longitudinal edges (Figure 2).

Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Jacqueline F. Stephens whose telephone number is
(571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone
number for the organization where this application or proceeding is assigned is 571-
273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jacqueline F Stephens
Primary Examiner
Art Unit 3761

March 5, 2007